IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

TUESDAY, THE 26TH JUNE 2007 / 5TH ASHADHA 1929

WP(C).No. 14067 of 2006(Y)

PETITIONER:

CHANDRA MOHAN K.,
H.S.A., GOVT. H.S.S. PILICODE,
P.O.PILICODE, KASARAGOD DISTRICT.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS:

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1. THE DIRECTOR OF HIGHER SECONDARY EDUCATION, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY SECRETARY TO GOVERNMENT, DEPARTMENT OF HIGHER EDUCATION, SECRETARIAT, THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. T.T. MUHMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 26/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.14067/06

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF THE RELEVANT PAGES OF THE SENIORITY LIST PUBLISHED ALONG WITH ORDER NO.Ad.B1-8542/01/HSE DT. 4.5.02.

EXT.P2. COPY OF THE MARK LIST DT. 29.5.81 ISSUED TO THE PETITIONER BY THE UNIVERSITY OF MYSORE.

EXT.P3. COPY OF THE CERTIFICATE DT. 4.8.03 ISSUED BY THE UNIVERSITY OF MYSORE TO ANOTHER CANDIDATE VIZ. MANOHARAN C.

EXT.P4. COPY OF THE CERTIFICATE DT. 17.6.98 ISSUED BY THE UNIVERSITY OF CALICUT TO ANOTHER CANDIDATE VIZ. MANOHARAN C.

EXT.P5. COPY OF THE REPRESENTATION DT. 10.7.03 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P6. COPY OF THE REPRESENTATION DT. 19.4.04 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P7. COPY OF THE JUDGMENT DT. 23.6.04 IN W.P.C NO. 18516/04.

EXT.P8. COPY OF G.O. (Rt) NO.5011/2004/G.Edn. DT. 23.11.04.

EXT.P9. COPY OF THE CERTIFICATE DT. 8.12.04 ISSUED BY RAMAKRISHNA INSTITUTE OF MORAL AND SPIRITUAL EDUCATION.

EXT.P10. COPY OF THE ORDER DT. 29.4.05 ISSUED BY 1ST RESPONDENT.

EXT.P11. COPY OF THE JUDGMENT DT. 28.9.05 IN CON. CASE (C) NO.867/05.

EXT.P12. COPY OF THE REPRESENTATION DT. 17.11.05 FILED BY THE PETITIONER BEFORE THE 1ST RESPONDENT.

EXT.P13. COPY OF G.O. (Rt) NO.1099/06/G.Edn. DT. 10.3.06.

EXT.P14. COPY OF THE CERTIFICATE ISSUED BY THE KANNUR UNIVERSITY.

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 14067 OF 2006

Dated this the 26th day of June, 2007

J U D G M E N T

The short but interesting question that has cropped up in this writ petition is whether the B.Ed degree obtained by the petitioner from the Mysore University in Moral and Spiritual Education could be treated as a Faculty which falls in the category of Arts/Social Science for the purpose of appointment of Higher Secondary School Teachers in Social Science.

2. In the nature of the order that I propose to pass, after hearing learned counsel for the petitioner and the learned Government Pleader, I do not deem it necessary to delve deep into the intricacy of the question. In my view it would be appropriate if the petitioner is relegated to the authority which passed Ext.P8 order for a fresh look in the matter.

3. In Ext.P8 order dated November 23, 2004, the Government noticed that the Mysore University had certified that the subject of

Moral and Spiritual Education in the B.Ed degree course of that University would come under the faculty of Arts/Social Science. The Calicut University had also certified that the above B.Ed degree course of the Mysore University obtained after regular study had been recognised as equivalent to the B.Ed degree of the Calicut University. Having found so, the Government issued a direction to the Director of Higher Secondary Education to examine whether the petitioner had undergone B.Ed degree course under a regular course of study for a specific duration. This direction was issued since it was noticed by the Government that the evidence produced by the petitioner at the time of hearing was not found to be sufficient enough to take a final decision in the matter. The report of the Director of Higher Secondary Education was also silent on that aspect. It was therefore that the Government thought it fit to issue a direction to the Director to consider the above aspect and to take a decision as to whether rescheduling of the rank assigned to the petitioner was necessary if he was found eligible for the same as per the provisions of the special rules.

4. Thereafter, the issue was considered by the Director in terms

of the direction issued by the Government in Ext.P8 order. The relevant paragraph of the order passed by the Director, a copy of which is on record as Ext.P10, is extracted hereunder for the sake of convenience:

> *"The petitioner has been working as HSA in Natural Science and for this he made use of his B.Ed in Biology which comes under the faculty of science. In the meanwhile, he urges that his B.Ed may be treated under the faculty of arts for assigning rank number in the seniority list for the appointment of HSST. He has not produced any proof to show that he has acquired B.Ed degree in Social Science faculty. The certificate issued by the Principal of Ramakrishna Institute of Moral and Spiritual Education does not state that the B.Ed degree comes under Social Science faculty. Moreover, there is no dearth of candidates with same faculty of arts to be placed in the seniority list."*

5. There is considerable force in the contention raised by the petitioner that the Director has exceeded his jurisdiction while passing Ext.P10 order. The Director was not in fact entitled to go into the question/issue which was already decided by the Government in favour of the petitioner. The thrust of the argument of the learned counsel is that the Government had asked the Director only to consider the question whether the petitioner had undergone the B.Ed course and

obtained her degree after a regular course of study. The Director should have confined his exercise only to that aspect.

6. The matter did not end there. Petitioner had taken up the matter yet again before the Government pursuant to Ext.P11 order passed by the Director. But unfortunate for him the Government made a volte face and concurred with the view taken by the Director. Ext.P13 is the order passed by the Government. The reasons stated by the Government in Ext.P13 order are not at all convincing. Nothing has been stated in the order as to why a different stand is now being taken contrary to the finding entered in Ext.P8. If at all the Government wanted to take a contrary view, reasons should have been stated in Ext.P13 order. But the Government while concurring with the finding entered by the Director has held that there was no valid ground to consider the request of the petitioner for inclusion of his name in the seniority list by treating the B.Ed degree obtained by him in Moral and Spiritual Education as a requisite qualification.

7. It is also pertinent to note that petitioner had undergone his B.Ed course in Botany/Moral and Spiritual Education. It was on the

basis of that course of study that petitioner was presumably accommodated in the post of HSA (Natural Science). Therefore the Department could not have taken up the plea that the B.Ed degree obtained by him in Moral and Spiritual Education will have to be ignored.

8. It is also pertinent to note that in the order passed by the Government it was noticed that the certificate of the Mysore University would not conclusively show that the subject Moral and Spiritual Education would come under the faculty of Arts/social Studies. It was also noticed by the Government that the syllabus of B.Ed degree of the Mysore University was not produced before the Government. Petitioner has a definite case that he had not produced the syllabus and such other documents at the time of hearing before the Government since the said issue had already been concluded by Ext.P8 order itself. Therefore there was no question of production of those documents before the Government. Again, I find considerable force in the above contention. Learned counsel submits that petitioner is prepared to produce those documents before the competent authority if this Court

issues such a direction.

In the above facts and circumstances, Exts. P10 & P13 orders are quashed. Government shall reconsider the matter and pass appropriate fresh orders after affording sufficient opportunity to the petitioner. It will be open to the petitioner to produce the syllabus of B.Ed degree in Biology/Moral and Spiritual Education, which he had undergone in the Mysore University. It will also be open to the petitioner to produce all other relevant materials which according to him would substantiate his case. The Government shall take a fresh decision in the matter keeping in view the earlier order (Ext.P8) passed by it. This shall be done, as expeditiously as possible, at any rate, within three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007